

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
CEDAR RAPIDS DIVISION**

MIKE ANDREWS AND JANA  
ANDREWS INDIVIDUALLY AND AS  
NEXT FRIENDS OF IAN ANDREWS,

Plaintiffs,

vs.

THE CITY OF WEST BRANCH,  
IOWA,

Defendant.

No. C03-0009

---

MIKE ANDREWS, Individually and as  
Next Friend of Ian Andrews; JANA  
ANDREWS, Individually and as Next  
Friend of Ian Andrews; IAN  
ANDREWS,

Plaintiffs,

vs.

CITY OF WEST BRANCH, IOWA, and  
DAN KNIGHT,

Defendants.

No. C04-0033

**ORDER**

---

This matter comes before the court pursuant to Defendants' November 1, 2004 motion for summary judgment (docket number 28). The parties have consented to the exercise of jurisdiction by a United States Magistrate Judge pursuant to 28 U.S.C. § 636(c).

The plaintiffs, Mike and Jana Andrews, individually and as next friends of their minor son, Ian Andrews, have brought claims against defendants Dan Knight and the City of West Branch, Iowa arising from Knight's shooting of the Andrews pet dog, Riker. At

the time of the shooting, Knight was the police chief of West Branch. Specifically, the plaintiffs seek damages based upon several constitutional theories. The plaintiffs' complaint seeks recovery of emotional distress damages, loss of parental and spousal consortium, and punitive damages. Defendants have moved for summary judgment on all of plaintiffs' claims, arguing that the undisputed facts, taken in a light most favorable to the plaintiffs, demonstrate that the plaintiffs have failed to state any claims upon which relief can be granted. Ultimately, the court agrees. Defendants' motion for summary judgment is granted.

### **SUMMARY JUDGMENT**

A motion for summary judgment may be granted only if, after examining all of the evidence in the light most favorable to the nonmoving party, the court finds that no genuine issues of material fact exist and that the moving party is entitled to judgment as a matter of law. Kegel v. Runnels, 793 F.2d 924, 926 (8th Cir. 1986). Once the movant has properly supported its motion, the nonmovant “may not rest upon the mere allegations or denials of [its] pleading, but . . . must set forth specific facts showing that there is a genuine issue for trial.” Fed. R. Civ. P. 56(e). “To preclude the entry of summary judgment, the nonmovant must show that, on an element essential to [its] case and on which [it] will bear the burden of proof at trial, there are genuine issues of material fact.” Noll v. Petrovsky, 828 F.2d 461, 462 (8th Cir. 1987) (citing Celotex Corp. v. Catrett, 477 U.S. 317 (1986)). Although “direct proof is not required to create a jury question, . . . to avoid summary judgment, ‘the facts and circumstances relied upon must attain the dignity of substantial evidence and must not be such as merely to create a suspicion.’” Metge v. Baehler, 762 F.2d 621, 625 (8th Cir. 1985) (quoting Impro Prod., Inc. v. Herrick, 715 F.2d 1267, 1272 (8th Cir. 1983)). In applying these standards, the court

must give the nonmoving party the benefit of all reasonable inferences to be drawn from the evidence. Krause v. Perryman, 827 F.2d 346, 350 (8th Cir. 1987).

### **STATEMENT OF MATERIAL FACTS NOT IN DISPUTE**

At approximately 8:00 a.m. on February 28, 2002, West Branch City Administrator Ty Doermann received a call from West Branch resident Mrs. Delores Carney. Mrs. Carney informed Doermann that a large black dog was running loose through her neighborhood and had been bothering her dog. Doermann conveyed Mrs. Carney's complaint to West Branch Police Chief, Dan Knight. Knight responded to the call at the Carney residence. Knight then proceeded to drive around the neighborhood in his squad car in an attempt to catch the loose dog. Knight spotted and then lost sight of the loose dog several times throughout his pursuit. Finally, Knight parked his squad car in the driveway of 417 North Maple Street, the Andrews' home, as he had seen a large black dog in the backyard at that address. He walked toward the fenced backyard and fired two shots into the dog. Unknown to Knight, Jana Andrews was standing on her back patio just a few feet away when he fired the shots. The dog Knight shot was the Andrews' Black Labrador Riker, whom Jana Andrews had just let out in their fenced backyard to urinate. Knight mistakenly thought that Riker was the dog he had been pursuing. Ultimately, Knight shot Riker a third time to put the dog out of his misery. Although Riker had a collar, had been vaccinated for distemper, had received his rabies booster, and did have a rabies tag, he was not wearing his collar or his rabies tag at the time of his death.

Prior to shooting Riker, Knight gave no warning, made no investigation to ascertain if anyone was home at the Andrews' residence and made no effort to ascertain if Riker had been out of the Andrews' yard that morning. Further, he failed to investigate or otherwise determine if the Andrews' back yard was completely enclosed by a fence, which it was, and made no investigation as to determine Riker's owner, i.e., knock on the door.

Knight had been the City of West Branch Police Chief since July 1985. Since that time, and for ten years or more prior to that time, it has been the practice of the police department to apprehend animals running at large, and to go onto citizens' private property when necessary to do so. Throughout his tenure as police chief, Knight did not agree that the police department should be responsible for animal control, and voiced this belief numerous times to various mayors and city council members. He got no response.

The policies and procedures of the City of West Branch Police Department provides that "[o]fficers should utilize all available methods to obtain capture of animals running at large" and that the "discharging of a firearm at an animal should be considered as a last resort and then only when conditions are safe to do so." West Branch city ordinance 55.50 provides that it is the "duty of the Director of the Animal Control Facility ("Director"), together with animal control officers . . . to impound any animal found running at large as defined herein or neglected as provided in Section 55.03 of this chapter."

### **CONCLUSIONS OF LAW**

#### **42 U.S.C. § 1983**

"To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivations was committed by a person acting under color of state law." West v. Atkins, 487 U.S. 42, 48 (1988). The plaintiffs bring this action pursuant to 42 U.S.C. § 1983, alleging that Knight's actions in shooting and killing Riker violated both their substantive due process rights and their Fourth Amendment right to be free from unreasonable seizures.

### Substantive Due Process<sup>1</sup> - Individual Liability<sup>2</sup>

Defendants argue that summary judgment is warranted on the plaintiffs' substantive due process claim as the undisputed facts demonstrate that Knight's shooting and killing of Riker was not only authorized, but was compelled by Iowa law. At most, defendants argue, Knight's actions were negligent, which is insufficient to constitute a substantive due process violation. Plaintiffs argue that summary judgment is inappropriate as a jury could find that Knight's actions in coming upon their private property without warrant or invitation, absent any investigation or inquiry, and walking to their fence-enclosed backyard, where he stood outside of the gate and shot their pet dog twice, all while Ms. Andrews witnessed the shooting from a few feet away, is sufficiently egregious to establish liability under 42 U.S.C. § 1983.

---

<sup>1</sup> Although not raised by the defendant, a substantive due process analysis is not warranted in this case considering the fact that the plaintiffs have also alleged that the defendants actions specifically violated their Fourth Amendment rights and the court finds that the plaintiffs' claim is "covered by" the Fourth Amendment. See Graham v. Connor, 490 U.S. 386 (1989) ("Because the Fourth Amendment provides an explicit textual source of constitutional protection against this sort of physically intrusive governmental conduct, that Amendment, not the more generalized notion of 'substantive due process' must be the guide for analyzing these claims."); County of Sacramento v. Lewis, 523 U.S. 833, 844 (1998) (noting the requirement of Graham that "if a constitutional claim is covered by a specific constitutional provision, such as the Fourth or Eighth Amendment, the claim must be analyzed under the standard appropriate to that specific provision, not under the rubric of substantive due process"). To be thorough, however, the court analyzed plaintiffs' due process claim as well.

<sup>2</sup> The court rejects the defendants' argument that Knight has been sued in his official capacity only. While the plaintiffs may have failed to use the words "individual capacity," they filed an unresisted motion to add Knight as a defendant, which the court granted on August 4, 2003. Plaintiffs also filed a separate motion to amend their complaint to add Knight as a defendant, which was granted on August 28, 2003. Knight is undeniably on notice that plaintiffs are seeking recovery against him individually.

“In order to succeed, a complaint for a violation of substantive due process rights must allege acts that shock the conscience, and merely negligent acts cannot, as a constitutional matter, do that: To hold otherwise ‘would trivialize the centuries-old principle of due process of law.’” S.S. v. McMullen, 225 F.3d 960, 965 (8th Cir. 2000) (quoting Daniels v. Williams, 474 U.S. 327, 332 (1986)); County of Sacramento v. Lewis, 523 U.S. 833, 846 (1998) (confirming that the “cognizable level of executive abuse of power” for substantive due process purposes is that which “shocks the conscience”).

It should not be surprising that the constitutional concept of conscience shocking duplicates no traditional category of common-law fault, but rather points clearly away from liability, or clearly toward it, only at the ends of the tort law’s spectrum of culpability. Thus, we have made it clear that the due process guarantee does not entail a body of constitutional law imposing liability whenever someone cloaked with state authority causes harm. In Paul v. Davis, 424 U.S. 693, 701, 96 S. Ct. 1155, 1160-1161, 47 L.Ed.2d 405 (1976), for example, we explained that the Fourteenth Amendment is not a “font of tort law to be superimposed upon whatever systems may already be administered by the States,” and in Daniels v. Williams, 474 U.S. at 332, 106 S. Ct. at 665, we reaffirmed the point that “[o]ur Constitution deals with the large concerns of the governors and the governed, but it does not purport to supplant traditional tort law in laying down rules of conduct to regulate liability for injuries that attend living together in society.” We have accordingly rejected the lowest common denominator of customary tort liability as any mark of sufficiently shocking conduct, and have held that the Constitution does not guarantee due care on the part of state officials; liability for negligently inflicted harm is categorically beneath the threshold of constitutional due process. It is, on the contrary, behavior at the other end of the culpability spectrum that would most probably support a substantive due process claim; conduct intended to injure in some way unjustifiable by any government interest is the sort of official action most likely to rise to the conscience-shocking level.

Id. (internal citations omitted). Even gross negligence is not actionable under 42 U.S.C. § 1983. S.S., 225 F.3d at 965 (citing Sellers v. Baer, 28 F.3d 895, 902-03 (8th Cir. 1994)).

Defendants argue that Knight's actions do not and cannot, as a matter of law, "shock the conscience" because, as a peace officer, he was compelled, pursuant to Iowa Code § 351.26, to kill Riker. Iowa Code § 351.26 provides:

It shall be lawful for any person, and the duty of all peace officers within their respective jurisdictions unless such jurisdiction shall have otherwise provided for the seizure and impoundment of dogs, to kill any dog for which a rabies vaccination tag is required, when the dog is not wearing a collar with rabies vaccination tag attached.

Plaintiffs claim that this provision is inapplicable to the case at hand because the City of West Branch has "otherwise provided for the seizure and impoundment of dogs."<sup>3</sup> Thus, the plaintiffs argue, Knight had no legal duty to kill Riker, Knight's actions were not authorized by Iowa law, and Knight cannot rely upon Iowa Code § 351.26 to support his argument that his actions do not "shock the conscience." The court agrees with the defendants.

The City of West Branch does not have a specific policy, procedure or ordinance, based upon the record provided to the court, specifically providing for the seizure and impoundment of dogs not wearing a collar with a rabies vaccination tag attached. The ordinance calling for the impoundment of animals running at large or neglected does not govern given this factual situation, i.e., Riker was neither running at large nor neglected.

---

<sup>3</sup> See plaintiffs' appendix at 34 (City of West Branch Police Policies and Procedures regarding animal control which states that "[t]he discharging of a firearm at an animal should be considered as a last resort and then only when conditions are safe to do so."); plaintiffs' appendix at 72 (City of West Branch Ordinance 55.05 which provides for the impoundment of any animals found to be either running at large or neglected) (emphasis added).

Thus, the court finds that Iowa Code § 351.26 does govern Knight's actions in shooting and killing Riker. It is undisputed that Riker was not wearing his collar with his rabies tags at the time of his death, although his rabies vaccination was, in fact, current. As Knight was acting in accordance with Iowa law, his actions cannot be said, as a matter of law, to "shock the conscience." Defendants' motion for summary judgment on plaintiffs' substantive due process claim is granted.

#### Fourth Amendment - Individual Liability

Defendants argue summary judgment is warranted on the plaintiffs' Fourth Amendment claim as Riker did not, as a matter of law, constitute "property" at the time he was seized, i.e., shot and killed, so as to implicate the Fourth Amendment. Alternatively, defendants argue that summary judgment should enter as Knight's "seizure" of Riker was not "unreasonable" under the circumstances. Plaintiffs counter that dogs are, in fact, deemed to be "property" for due process and Fourth Amendment purposes, and that Knight's killing of Riker, under the circumstances alleged and taken in a light most favorable to the plaintiffs, was not reasonable.

The Fourth Amendment preserves the right of people "to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures." U.S. Const. amend. IV. With respect to dogs as property, Iowa Code § 351.25 provides:

All dogs under six months of age, and all dogs over said age and wearing a collar with a valid rabies vaccination tag attached to the collar, shall be deemed property. Dogs not provided with a rabies vaccination tag shall not be deemed property.

Iowa Code § 351.25 (emphasis added).

Defendants read Iowa Code § 351.26 to mean that dogs over six months in age, but not wearing a collar with a valid rabies vaccination tag attached, are not property. Plaintiffs read Iowa Code § 351.25 to mean that Riker was, in fact, property, as he had

been “provided with” a rabies vaccination tag, even though he was not wearing his collar and tags at the time of his death. The court agrees with the plaintiffs’ interpretation.

The first sentence of the statute affirmatively provides that dogs six months of age or older and wearing their rabies vaccination tag on their collar are property. The second sentence of the statute states that “[d]ogs not provided with a rabies vaccination tag shall not be deemed property.” The inverse of this provision is that dogs that have been provided with a rabies vaccination tag are property. This interpretation is consistent with case law which has long held that dogs are “property.” See Sentell v. New Orleans & Carrollton R.R. Co., 166 U.S. 698, 700 (1897) (“Under common law, as well as by the law of most, if not all states, dogs are so far recognized as property that an action will lie for their conversion or injury . . .”); Leshner v. Reed, 12 F.3d 148, 150-51 (8th Cir. 1994) (reversing dismissal of a Fourth Amendment dog seizure case and remanding for a reasonableness analysis, implicitly recognizing dogs as “property” for Fourth Amendment purposes). See also Altman v. City of High Point, NC, 330 F.3d 194, 200-03 (4th Cir. 2003) (analyzing the law of various circuits and ultimately concluding that dogs do merit Fourth Amendment protection). “[O]n the strength of the Constitution’s text, of history, and of precedent, we hold that the plaintiffs’ privately owned dogs were ‘effects’ subject to the protections of the Fourth Amendment.” Id. at 203. Riker was the plaintiffs’ property for Fourth Amendment purposes. Summary judgment must nonetheless enter for the defendants on this claim as the undisputed facts show that Knight’s shooting of Riker was reasonable under the circumstances.

A reasonableness analysis for Fourth Amendment Purposes requires a careful balancing of the nature and quality of the intrusion on the plaintiffs’ Fourth Amendment rights against the countervailing government interests at stake. Graham, 490 U.S. at 396. “The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” Id.

“The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments -- in circumstances that are tense, uncertain, and rapidly evolving -- about the amount of force that is necessary in a particular situation.” Id. at 396-97. Ultimately, the question is “whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.” Id.

As set forth above, Knight’s actions in shooting Riker were in accordance with Iowa law, which Knight testified he was familiar with and acting pursuant to. Moreover, Knight’s testimony that he believed Riker to be the loose dog he had been pursuing and was heading toward the elementary school stands unrebutted. Defendants’ motion for summary judgment on plaintiffs’ Fourth Amendment claim is granted.

#### Qualified Immunity

Defendants argue that Knight’s actions are subject to qualified immunity, therefore making summary judgment appropriate on the plaintiffs’ claims against him. Plaintiffs resist, arguing that Knight is not entitled to qualified immunity as his actions in killing Riker was contrary to clearly established law and unreasonable when examined objectively.

“Qualified immunity is ‘an entitlement not to stand trial or face the other burdens of litigation.’” Saucier v. Katz, 533 U.S. 194, 200 (2001) (quoting Mitchell v. Forsyth, 472 U.S. 511, 526 (1985)). It is not a defense to liability. Id. In resolving qualified immunity issues, the threshold inquiry is whether the facts as alleged and taken in the light most favorable to the party asserting the injury show that the officer’s conduct violated a constitutional right? Id. “If no constitutional right would have been violated were the allegations established, there is no necessity for further inquiries concerning qualified immunity.” Id. at 201. If a constitutional violation could be made out, however, the second inquiry is whether the constitutional right was clearly established. Id. The “clearly established” question is a particularized inquiry, meaning that the “contours of the right

must be sufficiently clear that a reasonable official would understand that what he is doing violates that right.” Anderson v. Creighton, 483 U.S. 635, 640 (1987). “The relevant, dispositive inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted.” Saucier, 533 U.S. at 202. Summary judgment based upon qualified immunity is proper “[i]f the law did not put the officer on notice that his conduct would be clearly unlawful.” Id.

As set forth above, Knight’s shooting of Riker did not violate either the plaintiffs’ substantive due process or Fourth Amendment rights. Moreover, as Knight was acting pursuant to Iowa law when he killed Riker, it cannot be said that it would be clear to him that he was acting unlawfully under the circumstances. As such, Knight is entitled to qualified immunity and summary judgment is warranted.

#### Policy or Custom - Municipal Liability

Defendants argue that the City of West Branch is entitled to summary judgment on plaintiffs’ claims as the undisputed facts demonstrate that Knight was not acting pursuant to an unconstitutional policy or custom when he shot and killed Riker. Plaintiffs resist, arguing that Knight was following a long-standing unwritten policy of the City of West Branch Police Department when he went upon the plaintiffs’ private property and shot Riker.

A municipality cannot be held liable under § 1983 for an injury inflicted solely by its employees on a theory of respondeat superior. Springdale Educ. Ass’n v. Springdale Sch. Dist., 133 F.3d 649, 651 (8th Cir. 1998). Instead, a plaintiff seeking to impose municipal liability must identify either an “official municipal policy or a widespread custom or practice that caused the plaintiff’s injury.” Id. “The identification of an official policy as a basis upon which to impose liability ensures that a municipality is held liable only for constitutional deprivations ‘resulting from the decisions of its duly constituted

legislative body or for those officials whose acts may fairly be said to be those of the municipality.’” Id. (quoting Board of County Comm’rs of Bryan County, Okl. v. Brown, 520 U.S. at ---, 117 S. Ct. at 1388). “Although municipal liability for violating constitutional rights may arise from a single act of a policy maker, that act must come from one in an authoritative policy making position and represent the official policy of the municipality. McGautha, 36 F.3d at 56. In this context, a “policy” means “an official policy, a deliberate choice of guiding principle or procedure made by the municipal official who has final authority regarding such matters.” Mettler v. Whitledge, 165 F.3d 1197, 1204 (8th Cir. 2002).

Actions performed pursuant to a municipal “custom” not specifically approved by an authorized decisionmaker “may fairly subject a municipality to liability on the theory that the relevant practice is so widespread as to have the force of law.” Id. To prevail on a “custom” claim, the plaintiff must prove:

- (1) The existence of a continuing, widespread, persistent pattern of unconstitutional misconduct by the governmental entity’s employees;
- (2) Deliberate indifference to or tacit authorization of such conduct by the governmental entity’s policymaking officials after notice to the officials of that misconduct; and
- (3) That plaintiff was injured by acts pursuant to the governmental entity’s custom, i.e., that the custom was the moving force behind the constitutional violation.

Id. (citing Jane Doe “A” v. Special Sch. Dist. of St. Louis County, 901 F.2d 642, 646 (8th Cir. 1990)). If the City of West Branch instituted a policy or custom which deprived the Andrews of their constitutional rights, then they must illustrate that the city’s actions in so doing were taken with “deliberate indifference as to its known or obvious

consequences.” Shrum v. Kluck, 249 F.3d 773, 779 (8th Cir. 2001) (quoting Brown, 520 U.S. at 398).

“Liability for an unconstitutional custom or usage, however, cannot arise from a single act.” McGautha v. Jackson County, MO, Collections Dept., 36 F.3d 53, 56 (8th Cir. 1994) (citing Wedemeier v. City of Ballwin, 931 F.2d 24, 26 (8th Cir. 1991) (“a single deviation from a written, official policy does not prove a conflicting custom or usage”) and Williams-El v. Johnson, 872 F.2d 224, 230 (8th Cir.), cert denied, 493 U.S. 871 (1989) (one occurrence of improper prison guard hiring contrary to official written policy “does not prove the existence of a” conflicting custom or usage)). See also Mettler, 165 F.3d at 1205 (“A single incident normally does not suffice to prove the existence of a municipal custom.”).

Plaintiffs’ claim against the City of West Branch rests upon a long-standing practice of its police department to go onto private property and capture dogs running at large. According to the plaintiffs, Knight was following this “unwritten policy” in going upon their property to seize Riker. Defendants concede that there has been a “custom” within the City of West Branch Police Department to catch dogs running at large, and frequently going upon private property to do so. This custom, defendants argue, is clearly constitutional, comparing it to an officer’s entry onto private property to apprehend a fleeing criminal under the exigent circumstance and/or plain view doctrines. At most, defendants claim, Knight negligently applied the custom. The custom cannot be said to be the “driving force behind any violation.

The court has already decided that no constitutional violation occurred when Knight killed Riker. This makes irrelevant the parties’ apparent dispute whether Knight was an official policy maker or whether the police department’s practice constitutes an official policy versus a custom. There is no evidence that the policy or custom caused Riker’s death. Mettler, 165 F.3d at 1204 (“For a municipality to be liable, a plaintiff must prove

that a municipal policy or custom was the ‘moving force [behind] the constitutional violation’”) (citations omitted). Even assuming Knight was acting pursuant to the police department’s policy/custom in going onto the Andrews’ property, there was no official policy or custom calling for Knight to shoot Riker. It is undisputed that this is the first time any West Branch police officer has shot a pet animal. Moreover, there is no evidence that the policy or custom was instituted with “deliberate indifference as to its known or obvious consequence.” Shrum, 249 F.3d at 779. Defendants motion for summary judgment on plaintiffs’ municipal policy/custom claim is granted.

#### Failure to Train - Municipal Liability

Defendants argue that summary judgment should enter on plaintiffs’ failure to train claim as the plaintiffs have failed to produce any evidence that the City of West Branch was on notice that the alleged deficiency in animal control training for its police officers was insufficient to protect its citizens’ constitutional rights. Plaintiffs contend that a jury could find in their favor on this claim, arguing that the City of West Branch demonstrated a total and deliberate indifference with respect to its implementation of its animal control ordinances and the training and equipping of its animal control officers.

A municipality may be found liable under § 1983 if a complainant’s injuries resulted from the municipality’s failure to receive, investigate and act upon complaints of misconduct of its employees. S.J. v. Kansas City Missouri Public Sch. Dist., 294 F.3d 1025, 1028 (8th Cir. 2002). Likewise, a municipality may be liable under § 1983 for its failure to train its employees in a relevant respect which evidences a deliberate indifference to the rights of its citizens. Id. at 1029. “To establish this ‘deliberate indifference,’ [the plaintiff] must offer evidence that the [municipality] ‘had notice that [their] procedures were inadequate and likely to result in a violation of constitutional rights.’” Id. (quoting Thelma D. v. Board of Educ., 934 F.3d 929, 934 (8th Cir. 1990)). Plaintiffs may show that defendants had notice of the inadequacy of their procedures in two different ways, i.e.,

by showing that the failure to train their employees “is so likely to result in a violation of constitutional rights that the need for training is patently obvious,” or by showing a “pattern of misconduct [indicating] that the [municipality’s] responses to a regularly recurring situation are insufficient to protect the [citizens’] constitutional rights.” Id. (internal quotations omitted). See also Smith v. Watkins, 159 F.3d 1137, 1138 (8th Cir. 1998) (“a plaintiff can make out a failure to train by showing that the city officials were deliberately indifferent to deficient training programs or special training needs”); P.H. v. Sch. Dist. of Kansas City, MO, 265 F.3d 653, 660 (8th Cir. 2001) (“To establish § 1983 liability on the part of a school district for failure to adequately train its employees to report and prevent sexual abuse of students, there must be proof that this failure to train evidences a deliberate indifference to the rights of the students.”). “It is necessary to show that ‘in light of the duties assigned to specific officers or employees the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of the city can reasonably be said to have deliberately indifferent to the need.’” Andrews v. Fowler, 98 F.3d 1069, 1076 (8th Cir. 1996) (quoting City of Canton v. Harris, 489 U.S. 378, 390 (1989)). To require anything less would “engage the federal courts in an endless exercise of second-guessing municipal employee-training programs. This is an exercise we believe the federal courts are ill suited to undertake, as well as one that would implicate serious questions of federalism.” City of Canton, 489 U.S. at 392.

However, even if the training is deficient in some manner, the plaintiff must nonetheless establish that the training deficiency was the actual cause of the offending conduct. Andrews, 98 F.3d at 1076. “Would the injury have been avoided had the employee been trained under a program that was not deficient in the identified respect?” City of Canton, 489 U.S. at 391.

First, the plaintiffs have sustained no constitutional injury. Second, while Knight had voiced his opinion over the years that the police force was ill-equipped and trained to handle animal control, the plaintiffs point to no evidence demonstrating that the City of West Branch had notice that the then-existing animal control scheme was likely to result in the violation of its citizens' constitutional rights. As previously stated, this was the first domestic animal shooting in the city. Further, the city had not previously received any citizen complaints as it pertained to Knight's animal control duties. Finally, plaintiffs have made no showing that the alleged training deficiency actually caused Riker's demise. Not only have the plaintiffs failed to specifically identify the alleged deficiency, but there is no evidence demonstrating that the injury would have been avoided but for the identified deficiency. Defendants' motion for summary judgment on plaintiffs' failure to train claim is granted.

#### Negligence

Defendants argue that summary judgment is warranted on plaintiffs' negligence claim as Iowa law is clear that Riker was not "property" at the time he was shot, which means that the plaintiffs cannot recover damages for his destruction. The court has rejected this argument. Plaintiffs do not explicitly resist defendants' motion for summary judgment on their negligence claim other than to argue that Riker did, in fact, constitute "property" for Fourth Amendment protection purposes. Defendants concede in their reply brief that Knight's actions, at most, constituted a negligent application of the police department's custom of going onto private property when necessary to apprehend an animal running at large. The court agrees, and as negligence is insufficient to establish liability under 42 U.S.C. § 1983, summary judgment is granted on plaintiffs' negligence claim.


Emotional Distress

Defendants argue that they are entitled to summary judgment on plaintiffs' emotional distress claim because, under Iowa law, plaintiffs must demonstrate that they were related to the victim of the tortious conduct, i.e., Riker, within the second degree of consanguinity or affinity, and they were not. Plaintiffs resist entry of summary judgment, arguing that emotional distress damages may rightfully be awarded in this case as they are incidental to the commission of a different count. Plaintiffs argue that their relationship with Knight creates a duty on his part to avoid emotional harm and allows them to recover for their mental distress, even without physical injury. Defendants' motion for summary judgment is granted in its entirety, leaving no "counts" upon which emotional distress damages may be awarded as incidental to. As such, defendants' motion for emotional distress on plaintiffs' claim for emotion distress is granted.

Upon the foregoing,

IT IS ORDERED that Defendants' motion for summary judgment is granted. Judgment shall enter in defendants' favor and against plaintiffs, and this case is dismissed.

December 7, 2004.

  
\_\_\_\_\_  
JOHN A. JARVEY  
Magistrate Judge  
UNITED STATES DISTRICT COURT